

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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JERRY T. RAY,	)	
	)	DOCKET NO.: PT-2009-112D
Appellant,	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	ORDER and OPPORTUNITY
	)	FOR JUDICIAL REVIEW
Respondent.	)	

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**Statement of the Case**

Jerry T. Ray (Taxpayer) appealed a decision of the Yellowstone County Tax Appeal Board (CTAB) relating to the Department of Revenue’s (DOR) valuation of property located at 1943 Main Street, Billings, Montana. The Taxpayer argued the DOR overvalued the property for tax purposes, and seeks a reduction in value assigned by the DOR. The matter was heard before the State Tax Appeal Board on the record, without objection from the parties.

The Board having fully considered the testimony and exhibits from the record made before the Yellowstone County Tax Appeal Board, and all matters presented to this Board, finds and concludes that:

**Issue**

The issue before this Board is whether the Department of Revenue valued the subject property appropriately for tax purposes for tax year 2009?

## Summary

Jerry T. Ray is the Taxpayer in this proceeding and, therefore, has the burden of proof. Based on a preponderance of the evidence, the Board upholds the decision of the Yellowstone County Tax Appeal Board.

## Evidence Presented

1. Due, proper and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded opportunity to present evidence, verbal and documentary.
2. The subject property is a 46,304 square foot lot with a 10,766 square foot mixed use commercial warehouse on the property, with the following legal description:

Lot 7, Raymond Subdivision 311, Section 15, Township 01 North, Range 26 East, Yellowstone County, State of Montana. (Appeal Form, CTAB Exh. A, p. 1.)
3. The Taxpayer was represented at the Yellowstone CTAB hearing by Jennifer Ray. (CTAB Transcript, Appeal Form.)
4. The DOR was represented at the CTAB hearing by Robin Rude, Area Manager and Vicki Nelson, Lead Appraiser. (CTAB Transcript.)
5. For tax year 2009, the DOR used the income approach to value the subject property. This resulted in a value of \$487,000 for the subject property. (CTAB Exh. A, p.1.)
6. The income approach to value is generally a calculation of net income divided by a capitalization rate to determine the market value of the property. (Nelson Testimony.)
7. The DOR uses a capitalization rate of 8.8 percent derived from actual sales of commercial properties and a survey of property owners to determine actual NOI for those buildings. (Nelson Testimony.)

8. The Taxpayer filed a Request for Informal Review (AB-26) on September 10, 2009, asking for an informal review meeting to provide additional information. (AB-26 Form.)
9. After review of the subject properties, the DOR made no reduction in value. (AB-26 Form.)
10. The Taxpayer filed an appeal with the Yellowstone County Tax Appeal Board (CTAB) on June 4, 2010, stating:

“This is a mixed use commercial building, the current tenancy is retail sales, the warehouses in the rear are vacant and the open office space area in the upper level is vacant. This building has not had any major renovations. We are requesting the value of this building to remain at the previous value.” (Appeal Form.)
11. The Yellowstone CTAB heard the appeal on July 29, 2010.
12. During the CTAB hearing, the Taxpayer requested the Board set the value of the subject property at the 2002 calculated reappraisal value of \$249,195. (Ray Testimony.)
13. The Yellowstone CTAB denied the appeal on the fact that no evidence was presented to indicate the DOR’s analysis is incorrect. (Appeal Form.)
14. The Taxpayer appealed to this Board on September 9, 2010, arguing the lack of income and outgoing expenses makes the value too high. (Appeal Form.)

### **Principles of Law**

1. The State Tax Appeal Board has jurisdiction over this matter. (§15-2-301, MCA.)
2. All taxable property must be assessed at 100% of its market value except as otherwise provided. (§15-8-111, MCA.)
3. Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to

buy or to sell and both having reasonable knowledge of relevant facts.  
(§15-8-111(2)(a), MCA.)

4. For the taxable years from January 1, 2009, through December 31, 2014, all class four property must be appraised at its market value as of July 1, 2008. (ARM 42.18.124(b).)
5. The appraised value supported by the most defensible valuation information serves as the value for ad valorem tax purposes. (ARM 42.18.110(12).)
6. The State Tax Appeal Board must give an administrative rule full effect unless the Board finds a rule arbitrary, capricious, or otherwise unlawful. (§15-2-301(4), MCA.)

#### **Board Discussion and Conclusions of Law**

The Board must determine, based on a preponderance of the evidence, whether the DOR set an appropriate valuation for the subject properties for tax year 2009.

As a general rule, the appraisal of the Department of Revenue is presumed to be correct and the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. *Farmers Union Cent. Exch. v. Department of Revenue*, 272 Mont. 471, 901 P.2d 561, 564 (1995); *Western Airlines, Inc., v. Michunovich*, 149 Mont. 347, 353, 428 P. 2d 3, 7, *cert. denied* 389 U.S. 952, 19 L. Ed. 2d 363, 88 S. Ct. 336 (1967).

The Department may use different approaches (for example, market, income, and/or cost approaches), depending on available data, to appraise a property. *See, e.g., Albright v. Montana Department of Revenue*, 281 Mont. 196, 933 P.2d 815 (1997). When determining the market value of commercial property during a mass appraisal, it is, therefore, common for the DOR appraisers to

first consider an income approach which requires neither an inspection nor a separate land valuation process.

The Taxpayer argues the subject property value should be reduced because of the lack of income and outgoing expenses. The Taxpayer failed to provide the Board with any evidence to support the requested market value.

This Board concludes the evidence presented by the DOR did support the values assessed. This Board also concludes the Taxpayer has not provided any evidence that the DOR appraised value for July 1, 2008 is not fair market value.

Thus it is the opinion of this Board that the assessed value set by the DOR and affirmed by the Yellowstone County Tax Appeal Board is correct.

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**Order**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property value shall be entered on the tax rolls of Yellowstone County at a 2009 tax year value \$487,000 as determined by the DOR and affirmed by the Yellowstone County Tax Appeal Board.

Dated this 13th day of April, 2011.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

( S E A L )

/s/ \_\_\_\_\_  
DOUGLAS A. KAERCHER, Member

/s/ \_\_\_\_\_  
SAMANTHA SANCHEZ, Member

**Notice:** You are entitled to judicial review of this Order in accordance with Section 15- 2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of t his Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of April, 2011, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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/s/ \_\_\_\_\_  
DONNA EUBANK  
Paralegal